ATTORNEY GENERAL'S GUIDANCE REGARDING CANDIDATES WHO DO NOT RUN IN BOTH A PRIMARY AND GENERAL ELECTION

On May 13, 2014, Attorney General William Sorrell issued a formal opinion that Vermont's contribution limits remain in effect through December 31, 2014. Under that law, candidates running for state, legislative, and local office in Vermont may accept $1,000 per election from a single source and $3,000 per election from a political committee. 17 V.S.A. § 2805(a), as amended by 1987 Vt. Acts & Resolves 263, § 3 (Adj. Sess.). As this provision has been applied and enforced, a person who is a candidate in both a primary and general election may accept a total of $2,000 from a single source and $6,000 from a political committee during the two-year general election cycle.

The law has been applied to allow these candidates to accept the full contribution amount of $2,000 or $6,000 even after the primary election has taken place. Furthermore, in *Oxfeld v. Sorrell*, No. 2:08-cv-174, 2008 U.S. Dist. LEXIS 81872 (D. Vt. Oct. 15, 2008), the federal district court held that a person who announces an intention to run in a primary, but later runs as an independent, is also entitled to receive the full $2,000 and $6,000 contribution amounts. On the other hand, candidates who run as independents, but do not take any affirmative steps to become candidates in a primary election, are considered to have only one election. In the past, such candidates have only been able to accept $1,000 from a single source and $3,000 from a political committee, since they have only one election.

A recent decision from the Tenth Circuit Court of Appeals puts this interpretation in doubt. That court held a Colorado law with a similar approach was unconstitutional. *Riddle v. Hickenlooper*, 742 F.3d 922 (10th Cir. 2014). The court concluded that it is a violation of the Equal Protection Clause to set a different limit for contributions for write-in candidates and candidates from major parties. It held in the absence of a link between differing contribution limits and the state's interest in preventing corruption, the state could not justify infringing a donor's fundamental right to contribute to a candidate. The *Riddle* court relied, in part, on the Supreme Court's analysis in *Davis v. FEC*, 554 U.S. 724 (2008), in which the Court held that it was a First Amendment violation to set different contribution limits for candidates vying for the same seat.

In light of this reasoning, the Attorney General's Office will not enforce different contribution limits for candidates who run in both a primary and general election and candidates running for the same office who have only one election. To be consistent with the developing case law, all candidates for election to office in Vermont in the 2013-2014 cycle will be permitted to accept $2,000 from a single source and $6,000 from a political committee, unless the office is one for which no

primary is provided by law.[1] Specifically, this means that independent, write-in, minor party, and major party candidates will all be subject to the same limits. It also means candidates who lose in a primary election and do not run in a general election will also be permitted to accept the full $2,000 and $6,000 contribution amounts.

This enforcement policy applies through December 31, 2014. In January 2015, new contribution limits go into effect, which set the limit on amounts candidates may accept with reference to the two-year general election cycle, not elections.

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[1] Candidates for justice of the peace and local offices do not have primaries unless specifically provided by a town or city charter. Therefore, candidates running for those offices will only be permitted to accept up to $1,000 from a single source and $3,000 from a political committee.